

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TYCO HEALTHCARE GROUP LP,)	CIVIL ACTION NO. 2:07CV262(TJW)
MALLINCKRODT INC. and LIEBEL)	
FLARSHEIM COMPANY)	JURY TRIAL DEMANDED
)	
Plaintiffs,)	
)	
vs.)	
)	
E-Z-EM, INC.)	
)	
Defendant.)	
)	

**STIPULATION AND MOTION REGARDING DEFENDANT'S MOTION TO DISMISS
AND REGARDING AMENDED PLEADINGS**

Plaintiffs Tyco Healthcare LP (“Tyco”), Mallinckrodt Inc. (“Mallinckrodt”) and Liebel-Flarsheim Company (“L-F”), and Defendant E-Z-EM, Inc. (“E-Z-EM”), by and through their respective counsel, agree as follows:

WHEREAS, E-Z-EM filed its Motion to Dismiss Tyco and Mallinckrodt on August 30, 2007, alleging that Tyco and Mallinckrodt lacked standing to sue for infringement of the patent-in-suit;

WHEREAS, Plaintiffs have informed Defendant that Mallinckrodt has standing as an implied exclusive licensee of the patent-in-suit;

WHEREAS, in order to avoid unnecessary motion practice, Defendant has agreed to withdraw its Motion to Dismiss Tyco and Mallinckrodt, and Plaintiffs have agreed to voluntarily dismiss Tyco with prejudice;

WHEREAS, Plaintiffs have agreed to respond to discovery in the above-captioned action on behalf of Tyco as if Tyco remained a party to the action;

WHEREAS, Mallinckrodt and L-F have agreed to file a First Amended Complaint

indicating that Mallinckrodt is an implied exclusive licensee of the patent-in-suit;

WHEREAS, E-Z-EM consents to Mallinckrodt and L-F filing a First Amended Complaint, a copy of which is attached as Exhibit A hereto;

WHEREAS, E-Z-EM filed its Answer, Affirmative Defenses and Counterclaim to L-F's Complaint on August 30, 2007;

WHEREAS, E-Z-EM intends to answer Mallinckrodt's and L-F's First Amended Complaint, and E-Z-EM intends to amend its Counterclaim to include allegations against both Mallinckrodt and L-F;

WHEREAS, Mallinckrodt and L-F consent to E-Z-EM filing a First Amended Counterclaim;

WHEREAS, L-F's response to E-Z-EM's original Counterclaim would be due on September 24, 2007 if not superseded by the First Amended Counterclaim prior to that date;

WHEREAS, E-Z-EM has agreed to extend L-F's time to respond to the original Counterclaim until October 14, 2007, to provide E-Z-EM sufficient time to file a First Amended Counterclaim, which supersedes the original Counterclaim, and to provide Mallinckrodt and L-F sufficient time to respond to E-Z-EM's First Amended Counterclaim;

Accordingly, the parties hereby move as follows:

L-F shall have until October 14, 2007 to respond to E-Z-EM's original Counterclaim, unless superseded by E-Z-EM's First Amended Counterclaim.

DATED: September 14, 2007

By: _____/s/_____

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DATED: September 14, 2007

By: _____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.R.Civ.P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true ad correct copy of this document via email, facsimile and/or U.S. First Class Mail this 14th day of September, 2007.

/s/

Melissa R. Smith